



## CERTIFICATE OF NEED AND SERVICE REDUCTIONS

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### CERTIFICATE OF NEED (CON) PROGRAMS

According to the [National Conference of State Legislatures](#), 36 states have CON programs. Generally, these programs require health care facilities to obtain regulatory approval before undertaking certain actions, such as building or expanding facilities, offering new services, or purchasing specified equipment. States vary in the scope of facilities and services subject to CON requirements.

In Connecticut, the Department of Public Health's [Office of Health Care Access](#) operates the CON program for most categories of health care facilities, including hospitals. [The Department of Social Services](#) operates the CON program for nursing homes and certain other long-term care facilities.

### ISSUE

Do states require health care facilities to obtain a certificate of need before reducing health care services?

### SUMMARY

Some states, including Connecticut, require health care facilities to obtain a CON before terminating specified services. However, states generally do not require CON authorization to reduce services. While some states (e.g., Maryland) require a CON to change the scope of health care services offered, the applicable law or regulations typically do not include service reductions alone as among those changes requiring approval.

In Maryland, while a CON is generally required before a health care facility may change the scope of health care services, a facility may seek an exemption for service volume decreases under specified conditions.

Several states, while not requiring CON approval to reduce services, include the impact of service

reductions among the review criteria for projects requiring CON approval. Also, some states require facilities to notify the state of service reductions. Below are examples.

This report does not address CON requirements for (1) decreases in bed capacity or (2) full service termination.

## **STATE CON LAWS AND REGULATIONS ADDRESSING SERVICE REDUCTIONS**

### ***Change in Scope of Service***

Maryland generally requires a health care facility to obtain a CON to change the scope of services but provides an exemption for service reductions under the following circumstances. The Maryland Health Care Commission may exempt from CON approval a change in the type or scope of services offered by a health care facility if, at least 45 days before increasing or decreasing the volume of one or more services, the commission finds that the proposed change is pursuant to the (1) consolidation or merger of two or more health care facilities, (2) conversion of all or part of a health care facility to a non-health-related use, or (3) conversion of a hospital to a limited-service hospital.

The facility seeking an exemption must file a notice of intent that includes, among other things, a general description of the proposed project. In the case of mergers and consolidations, the notice must describe any proposed conversion, expansion, relocation, or reduction of one or more health care services. Within five days after receiving the notice, the commission must publish notice of its receipt in a newspaper and the next issue of the Maryland Register. The commission also must mail the notice to elected public officials in the applicable district or jurisdiction.

The commission must solicit comment and relevant information from the affected public in evaluating whether the action proposed for exemption is in the public interest. A public informational hearing is required if the exemption involves the (1) closing or partial closing of a hospital, if there are fewer than three acute general hospitals in that jurisdiction, or (2) conversion of a hospital to a limited-services hospital.

Within 45 days after receiving the notice of intent, the commission must issue a determination of exemption from CON review if the (1) facility has provided the required information and has held a public informational hearing if required and (2) commission finds that the action proposed (a) is in the public interest; (b) is not inconsistent with the State Health Plan or an institution-specific plan developed by the commission; and (c) will result in more efficient and effective delivery of health care services ([Md. Code Regs. 10.24.01.04](#)).

## ***Notice of Service Reductions***

Some states require health care facilities reducing services to notify the CON regulatory agency or other state agency. For example, if a hospital in Illinois reduces any of specified services by 50% or more, the hospital must notify the Health Facilities and Services Review Board, Department of Public Health, and state legislators serving the district where the hospital is located. The hospital must send the notice within 30 days after the service reduction ([20 Ill. Comp. Stat. 3960/12.4](#)).

For another example, in Kentucky, a health care facility must give the Cabinet for Health and Family Services 30 days' notice of its intent to reduce or terminate a service ([900 Ky. Admin. Regs. 6:110](#)).

## ***Review Criteria***

Some states include the impact of service reductions among the review criteria for projects requiring CON approval.

For example, Rhode Island regulations require the Department of Health, when reviewing a CON application, to make findings on the extent to which the proposal, if approved, would meet certain accessibility criteria. For service reductions, eliminations, or relocations, this includes:

1. the need that the population presently served has for the service;
2. how that need will be adequately met by the proposed relocation or by alternative arrangements; and
3. the effect of the service reduction, elimination, or relocation on the ability of certain groups to obtain needed health care (low income persons, racial and ethnic minorities, women, individuals with disabilities, and the elderly) (R.I. Admin. Code 31-4-17:13.0).

Other states with similar provisions in law or regulation include Hawaii, New Jersey, New York, North Carolina, South Carolina, Washington, and West Virginia.

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